


CLERK U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS** 2018 JAN 29 AM 11:18
DALLAS DIVISION

DEPUTY CLERK 

RICKY R. FRANKLIN)

Plaintiff,)

v.)

CLEAR SPRING LOAN)
SERVICES, d/b/a SORTIS)
FINANCIAL)

Defendant

Civil Action File No.

318 - CV0228 - L

JURY DEMAND

ORIGINAL COMPLAINT

NOW COMES the Plaintiff, RICKY R. FRANKLIN, by and through himself and for his Complaint against the Defendant CLEAR SPRING LOAN SERVICES d/b/a, SORTIS FINANCIAL, and Plaintiff states as follows:

NATURE OF THIS ACTION

1. Plaintiff brings this action for actual and statutory damages arising out of and relating to the conduct of Defendants, to include all of its affiliates, subsidiaries, and/or related entities, as well as all persons and entities acting on behalf of Defendants, including but not limited to CLEAR SPRING LOAN SERVICES d/b/a, SORTIS FINANCIAL, in negligently, knowingly, and/or willfully contacting Plaintiff on his cellular telephone without his express consent within the

meaning of the TCPA. This is an action for actual and statutory damages for violations of the Telephone Consumer Protection Act (hereinafter, "TCPA"), 47 U.S.C. section 227 *et seq.*¹

JURISDICTION & VENUE

2. Jurisdiction of this Court is conferred by 15 U.S.C. § 1692 and 28 U.S.C. § 1331. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. RICKY R. FRANKLIN, (hereinafter, Plaintiff) is a natural person at all relevant times residing in county of Henry, State of Georgia.
5. Defendant Clear Spring Loan Services, Inc, (hereinafter, CLS) is a loan company with a corporate office located at 18451 N. Dallas Parkway, Suite 100, Dallas, Texas 75287.
6. At all relevant times, Defendant has conducted business in Georgia, solicited business in Georgia, engaged in a persistent course of conduct in Georgia, or has derived substantial revenue from services rendered in Georgia.

¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

(TCPA) 47 U.S.C §227

7. In 1991, Congress enacted the TCPA in response to a growing number of consumer complaints regarding certain telemarketing practices.

8. The TCPA regulates, inter alia, the use of automated telephone equipment, or “predictive-dialers”, defined as equipment which “has the capacity...(a) to store or produce telephone numbers to be called, using a random or sequential number generator; and (b) to dial such numbers. 47 U.S.C. § 227(a)(1). Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of auto-dialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.²

9. According to findings by the Federal Communications Commission (FCC), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.³

² 47 U.S.C. § 227 (b)(1)(A)(iii)

³ Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd. 14014 (2003)

ALLEGATIONS OF FACT

10. On or about the beginning of July, 2014, Plaintiff received a letter from Defendant claiming he owed some alleged debt.

11. On October 24, 2014, at 1934hrs, Plaintiff answered his cellphone...and heard an automated voice say **“please stay on the line”**. After waiting for a few seconds, a representative came on the line. Plaintiff informed the representative that he did not wish to receive calls on his cellphone. The representative told the Plaintiff **“That the automated calls would continue”**. This call was recorded by the Defendants as well as the Plaintiff.

12. During the following months, Plaintiff received over seven-teen (17) phone calls from the Defendants and its agents.

13. On the very 1st call, Plaintiff informed the agent to “please stop calling his cellular phone”.

14. Despite Plaintiff’s request, CLS continued to harass Plaintiff with automated calls which caused the Plaintiff to incur significant anxiety and inconvenience.

15. The calls Plaintiff received were made using equipment that had the capacity to conduct calling campaigns supplemented by automation, which stores or produces telephone numbers to be called.

16. Plaintiff never consented to, requested, or otherwise desired or permitted calls from the Defendant using pre-recorded voice messages for the purpose of debt collection or any other purpose.

17. Plaintiff has never provided his cellular phone number to Defendant or given his express consent to be called, whether on his own or on behalf of any third party.

18. Plaintiff suffers damages in the form of charges to his cellphone for these unauthorized phone calls.

19. Plaintiff suffered a concrete and real invasion of Plaintiff's legally protected privacy rights through Defendant's violation of the TCPA. The continuous unwarranted phone calls caused the Plaintiff harassment, as well use of his personal phone which could have been used for other purposes

20. Plaintiff suffered harm and damages in the form of emotional distress such as anger, and resentment each time he received a phone call from the Defendant.

COUNT I
KNOWING AND/OR WILLFUL VIOLATIONS
OF THE ("TCPA"), 47 U.S.C. SECTION 227, ET SEQ.

21. The telephone number called by Defendant was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

22. Using prohibited equipment and without prior express written consent, the Defendant CLS, contacted the Plaintiff over 17(seventeen) times by means of artificial pre-recorded voice messages to a cellphone or pager in violation of 47 U.S.C. 227(b)(1)(A)(iii).

23. As a result of the Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to treble damages of up to \$1,500.00 for each and every call in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3).

24. The telephone number called by Defendant was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

COUNT II
NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT 47 U.S.C. §227, et seq

25. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

26. Using prohibited equipment and without prior express consent, the Defendant CLS, contacted the Plaintiff at least seventeen (17) times by means of automatic telephone calls or, predictive-dialers in violation of 47 U.S.C. section 227 et seq.

27. Plaintiff instructed Defendants to stop all calls to him and cease calling his cellular telephone. The foregoing acts and omissions of Defendants constitute

numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227et seq.

28. As a result of both Defendants World Finance Inc., and Defendant Sterling Finance Inc., negligent violations of 47 U.S.C. § 227 et seq, Plaintiff is entitled to an award of \$500.00 in statutory damages for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

PRAYER FOR RELIEF

a) As a result of Defendants, Clearspring Loan Servicing, d/b/a Sortis Financial., negligent violations of 47 U.S.C. § 227 et seq, Plaintiff is entitled to an award of \$500.00 in statutory damages for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B);

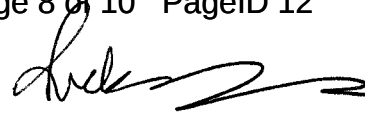
b) As a result of Defendants, Clearspring Loan Servicing, d/b/a Sortis Financial., willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks statutory damages of \$1500.00 for each and every call that violated the TCPA;

c) Actual damages from the Defendants for all damages including emotional distress suffered as a result of the intentional, reckless, and/or negligent behavior pursuant the TCPA;

d) A trial by jury on all issues so triable;

e) Such other and further relief as may be just and proper

Respectfully submitted,



Ricky R. Franklin

708 Brambling Way
Stockbridge, GA 30281
(678-650-3733)
rrfrank12@hotmail.com

RECEIVED

JAN 29 2018

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ricky R. Franklin

(b) County of Residence of First Listed Plaintiff

Henry

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

ClearSpring Loan Services

County of Residence of First Listed Defendant

Dallas

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

318 - CV0228 - L

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)Citizen of This State ☐ 1 ☒ 1Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4Citizen of Another State ☒ 2 ☐ 2Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5Citizen or Subject of a Foreign Country ☐ 3 ☐ 3Foreign Nation ☐ 6 ☐ 6**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	LABOR	PROPERTY	OTHER	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from Another District (specify)☐ 6 Multidistrict Litigation - Transfer☐ 8 Multidistrict Litigation - Direct File**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 U.S.C. section 222

Brief description of cause:

Telephone Consumer Protection Act (TCPA)

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

24 JAN 18

SIGNATURE OF ATTORNEY OF RECORD

Ricky R. Franklin

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

